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Before the
FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Amendment of the Commission's Rules) WT Docket No. 97-81
Regarding Multiple Address Systems)

PETITION FOR EMERGENCY RELIEF OF ITRON, INC.

On July 1, 1999, the Commission released a Further Notice of Proposed Rulemaking and Order ("FNPRM") in the above-referenced proceeding. In the FNPRM, the Commission sought comment on issues relating to the licensing of Multiple Address Systems ("MAS"), and it extended its previously-adopted application freeze to spectrum in the 928/952/956 MHz bands (the "900 MHz bands"). For reasons that are discussed below, the extension of the application freeze to the 900 MHz bands will cause extreme — and unnecessary — hardship for Itron, Inc. ("Itron"), its utility customers, and the general public. Itron, therefore, respectfully requests emergency relief.

INTRODUCTION AND BACKGROUND

Itron is the world leader in RF-based automatic meter reading ("AMR") systems used by gas, electric, and water utility companies. Itron's AMR systems include a radio module to be installed in the metering device (the "meter module") and any of four different technologies for communicating with the meter module: (1) a handheld computer equipped with a radio transceiver; (2) a vehicle equipped with a radio transceiver; (3) a neighborhood concentrator that connects to a wide area network; or (4) an in-building gateway that may connect to a telephone or a wide area network. These meter reading devices communicate with the meter modules on a 12.5 kHz licensed MAS channel in the 900 MHz band. Itron selected the 900 MHz MAS bands for its AMR systems because these bands were originally established for utility use.

Itron now has more than 14 million MAS receivers and transmitters deployed at more than 300 utilities throughout the United States. In addition, Itron has numerous customers who have received or ordered Itron AMR equipment, but who have not yet applied for an FCC license to operate an AMR system. This equipment is valued in the millions of dollars; the freeze renders it worthless. In short, the freeze imposes inordinate burdens on Itron and its customers. These burdens are threatening the rapidly growing and consumer-beneficial AMR industry.

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DISCUSSION

I. The Application Freeze Should Be Lifted For Applicants Seeking To Operate AMR Equipment In The 900 MHz MAS Band.

The 900 MHz application freeze in the FNPRM is causing immediate harm to Itron's business and immediate harm to utilities that have selected, planned for, and are dependent on the successful installation of AMR equipment. The Commission should, therefore, lift the freeze.

A. The Application Freeze In The 900 MHz Band Is Causing Hardship To Makers And Users Of AMR Equipment.

The benefits of AMR systems are undeniable. Where AMR systems are not used, field technicians must personally inspect each metering device, consuming vastly more time and personnel resources than AMR systems require. In addition, in some cases it is impractical to read meters manually because the meters are deployed in areas of high security or underground, or there are other factors limiting access to a site. The Commission has found that AMR systems "benefit consumers by reducing billing problems, increasing the accuracy of meter readings and, ultimately, lowering utility bills."¹

Denying utilities a full range of options for satisfying their meter reading requirements prevents them from serving their customers with maximum efficiency and in some cases may force them to reduce the level of service provided. Itron estimates that for the second half of 1999 the freeze will affect over \$5 million worth of orders for its AMR equipment. None of the customers ordering this equipment will be able to secure new MAS licenses to operate it. Many of those customers perform critical infrastructure functions, including the provision of gas, water, and electric utility service.² By "freezing-out" applications to use over \$5 million worth of Itron's AMR equipment, the Commission has not only imposed a financial hardship on Itron's customers, but also has undermined these utilities' ability to serve the public at large.

¹ In re Amendment of Sections 22.501(g)(2) and 94.65(a)(1) of the Rules and Regulations to Re-Channel the 900 MHz Multiple Address Frequencies, 3 FCC Rcd 1564 (1988).

² Congress has made it abundantly clear that communications in these industries deserve special attention. See, e.g., H.R. Rep. No. 105-217 (1997) at 572 (discussing exemption of licenses used by utilities and other entities providing public safety services from competitive bidding).

Further, the application freeze could be devastating for Itron's business. Itron estimates that the freeze will cost it \$3 million in gross profit through the end of the year, transforming what would have been a profitable second half into a money-losing one. Additional losses are projected for next year if the freeze remains in effect. Unless the Commission reverses course, the freeze will have a significant adverse impact on Itron's bottom line, and Itron will have to curtail severely its development of new and innovative AMR products.

In sum, the MAS application freeze in the 900 MHz band is having an inordinately negative impact on Itron, Itron's customers, and the public.

B. The Commission Should Not Impose Undue And Unnecessary Hardship On The Makers And Users Of AMR Equipment.

The imposition of an application freeze is an extreme step, which the Commission has stated elsewhere it is reluctant to take absent "evidence that there is a serious problem that cannot be resolved under [its] current rules and procedures."³ The Commission, moreover, should be especially reluctant to impose an application freeze that severely burdens an identifiable user or class of users. In this instance, there is no evidence of a "serious problem," and the freeze is a solution in search of a problem.

The FNPRM suggests that a freeze is necessary to preserve the Commission's licensing flexibility should it adopt "geographic licensing and auctions for these bands."⁴ In fact, however, licenses in the 900 MHz MAS bands should not be subject to competitive bidding, even under the Commission's expanded auction authority. The Communications Act authorizes the Commission to award licenses by competitive bidding only in those instances in which mutually exclusive applications are received for filing⁵, but the Commission must first make every reasonable effort to avoid mutual exclusivity.⁶

³ In the matter of Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services, PR Docket No. 92-235 (rel. Apr. 13, 1999) ¶ 14.

⁴ FNPRM ¶ 28.

⁵ 47 U.S.C. § 309(j)(1).

⁶ 47 U.S.C. § 309(j)(6)(E) ("Nothing in this subsection, or in the use of competitive bidding, shall be construed to relieve the Commission of the obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings.").

Applications for MAS paths in the 900 MHz band fail to satisfy the mutual exclusivity predicate for competitive bidding. Rather, applications for such paths are tied to unique system requirements (*i.e.*, they are licensed on a site-by-site basis) and they are subject to prior coordination. As the Commission is aware, the technical engineering and frequency coordination procedures that traditionally have pertained to MAS licensing have served utilities and the public well, and they have virtually eliminated mutually exclusive applications in this service except in rare instances in which simultaneous applications are made through different frequency coordinators.

Consistent with its obligations under Section 309(j)(6)(E) of the Communications Act, the Commission therefore can avoid mutual exclusivity in this service by continuing to license these 900 MHz MAS systems on a coordinated, site-by-site basis. Indeed, the FNPRM suggests that it would be inappropriate to auction licenses in this band for that very reason.⁷

Moreover, it is unrealistic in the extreme to assume that — if the Commission were to attempt to impose auctions in this band — the acceptance of a limited number applications while the FNPRM is pending would have any significant impact on the value of 900 MHz MAS spectrum.⁸ Frequencies already are scarce in the major metropolitan areas where demand is highest; the chances of mutual exclusivity are greatest; and the potential for raising revenues from an auction is at a maximum. Whether or not the Commission imposes a freeze on new applications in the band, any auctions of 900 MHz MAS spectrum would of necessity be concentrated in outlying areas where supply exceeds demand, and would be inconsequential in terms of revenue production.

II. The Application Freeze Should Not Apply To “Major” Modifications That Would Not Change The Interference Characteristics Of A Licensed Station.

In any event, the Commission should immediately expand the exceptions to the freeze set forth in paragraph 29 of the FNPRM, which provides that applications for minor amendments will continue to be processed. The issue should not be whether an amendment is “major” or “minor,” but rather whether the applicant is proposing a change that necessitates a different coordination, such as a change in frequency, or a

⁷ FNPRM ¶ 24.

⁸ The FNPRM notes that the Commission has been receiving approximately 70 applications per month in this band. FNPRM ¶ 28 n.93.

change in the location of the center point that must be made to maintain compliance with the station-to-station separation requirements for MAS systems.

For example, in several cases utilities that currently operate Itron AMR systems using a handheld meter reading device have purchased equipment in order to upgrade to vehicle-mounted meter reading systems. The vehicle-mounted transceivers operate at a higher power than the handheld models and, consequently, a "major" modification of the utility's existing license is required to operate the upgraded system.⁹

In fact, however, both the handheld system and the vehicle-mounted system are classified as "mobile" by the Commission and are subject to identical frequency coordination standards, regardless of output power. MAS systems are coordinated on an area-wide basis, with the rules specifying the distance by which co-channel systems must be separated. That is, although the actual strength of the signal from a vehicle-mounted AMR system may be higher than that of the handheld model, the coordination for the handheld model is not based on power, and fully covers the higher-powered transmission.

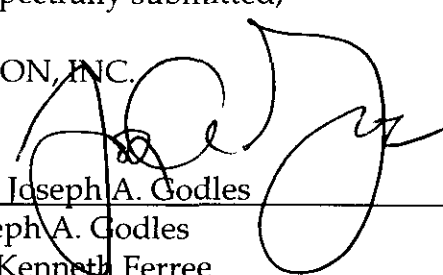
⁹ Under Section 1.929 of the Commission's rules, 47 C.F.R. § 1.929, major modifications include any increase in EIRP of greater than 3 dB.

CONCLUSION

For the reasons set forth above, Itron urges the Commission to lift the application freeze in the 928/952/956 MHz bands. To the extent that the Commission does not lift the freeze outright for new station applications, at a minimum it should exempt modification applications from the freeze, except for modification applications necessitating a new coordination because they increase an MAS system's interference potential.

Respectfully submitted,

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